DEC 11 1950

October Term, 1950

No. 352

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a National Banking Association,

Petitioner,

vs.

COUNTY OF LOS ANGELES, a body corporate and politic; and CITY OF LONG BEACH, a municipal corporation,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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In the Supreme Court of the United States

October Term, 1950
No. 362

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association,

Petitioner,

vs.

COUNTY OF LOS ANGELES, a body corporate and politic; and CITY OF VERNON, a municipal corporation,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

Petitioner prays that this Court grant rehearing of its Order of November 27, 1950, denying the petition for writ of certiorari, 340 U. S. ....., and that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California in the above entitled case, as prayed for in the petition filed October 14, 1950, herein.

Reasons for Granting Rehearing and Issuing the Writ.

1. When petition for certiorari was filed herein on October 14, 1950, the judgment below had not been subsequently construed. Since that time, the California court has construed its judgment herein and in so doing clearly demonstrated that its judgment not only violates petitioner's rights to due process but that it presents substantial federal questions which could not previously have been presented to this Court.

Respondents represented to this Court that the judgment below, in barring petitioner's recovery, solely because

of failure to appear before a board of equalization, had applied a long settled state rule and should have been anticipated (pp. 16-17). Respondents asserted that the doctrine of *Brenner v. City of Los Angeles* (1911), 160 Cal. 72, 116 P. 397, upon which petitioner had expressly relied, was not overruled herein but applied to a situation of "exempt" property. They contended that petitioner's property was not exempt (pp. 9-11); therefore, no *new* procedural requirement had been applied *retroactively* and no violation of petitioner's right to due process had occurred.

On October 20, 1950, the California Supreme Court construed the judgment below contrary to respondents' representation. By unanimous decision in *City and County of San Francisco v. San Mateo County*, 36 Adv. California 136, 22 P. (2d) 860 (which became final on November 20, 1950), it held "exempt" property of a governmental agency was not relieved from an illegally levied tax thereon *unless* the governmental agency first applied to a board of equalization for *affirmative* correction of the assessment. The California court relied solely upon the decision herein. It said (222 P. (2d) 862-3):

> "It therefore appears . . . that the fill which raised the level of the land for use as an airport . . . was an improvement 'constructed' by the city and therefore *exempt from taxation* under the constitutional amendment . . . In the recent case of *Security-First National Bank v. County of Los Angeles*, 1950, 35 Cal. 2d ....., 217 P. 2d 946, 947, this court stated: 'It is the general rule that a taxpayer seeking judicial relief from an erroneous assessment must have exhausted his remedies before the administrative body empowered initially to correct the error . . . An exception is made when the at-

tempted assessment is a nullity because the property is either tax exempt or outside the jurisdiction . . . But resort to the board of equalization is not rendered unnecessary by the fact that, as in the present case, the error is one in the classification of property and the tax is assailed on the ground that it is in violation of constitutional mandates . . . The State Board of Equalization has the power 'initially' to make a correction of the error alleged in this case, and the facts do not bring it within any exception noted in the authorities cited. It is not claimed that the assessment is a nullity in toto. An adjustment is sought by virtue of an erroneous inclusion of exempt improvements with *taxable* lands." (Our emphasis.)

From 1911 until the decision herein, the unquestioned rule in California, as stated in the *Brenner* case (116 P. 399), was as follows:

> "it is time to *renounce* the doctrine that money paid under protest for taxes on property *not liable to assessment* cannot be recovered unless application is made for correction of the assessor's record before the period of equalization fixed by law has passed." (Our emphasis.)

In that case, the assessor included in Brenner's real property assessment the "exempt" portion thereof, represented by the mortgage thereon owned by the State Board of Regents, a governmental agency. Factually, the case was the exact counterpart of the *San Mateo* case. By reason of its subsequent interpretation, the judgment herein admittedly reversed the *Brenner* rule in effect since 1911. Petitioner could not have anticipated that nine years later that rule would be reversed *retroactively* so as to prevent petitioner from making the newly-required appearance before the Board of Equalization. In so do-

ing, the California court denied petitioner due process of law.

2. As now construed in the *San Mateo* case, the judgment below constitutes a grave obstacle to the conduct of governmental activities of a defense nature during the present acute international emergency. Without question, it will again be necessary during this emergency for the Government to install machinery and equipment, owned by it or its agencies in private defense plants, as occurred during World War II. For such facts, see: *Reconstruction Finance Corporation v. Beaver County*, 328 U. S. 204, 206-208; *United States v. Allegheny County*, 322 U. S. 174, 178-179.

Application of the rule enunciated in the judgment below, as confirmed in the *San Mateo* case, will require the Government and its agencies to employ personnel to check all local assessments made of California defense plants in which government-owned property is located, to ascertain whether or not illegal assessments have been made of "exempt" property and thereafter to make, on behalf of the Government, innumerable appearances before local boards of equalization to prevent collection of local taxes illegally imposed upon such "exempt" Government property. These boards sit simultaneously in all counties in July, five months *before* local tax bills are issued. Their sessions are limited by state statutes to a two-week period. Protection of the interests of the Government would thus entail a tremendous use of manpower, both civilian and military, more properly directed to the defense effort itself.

In addition, claimed right of local entities to tax such "exempt" property of the Government through discriminatory practices sustained in this and companion Case 361 will greatly increase the cost to the Government, and its

taxpayers, of such defense effort. Information furnished us by official sources indicates that attempted discriminatory taxation on similar "exempt" government-owned property during World War II involved claimed local taxes against governmental agencies aggregating hundreds of millions of dollars.

Conclusion.

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Supreme Court of the State of California.

Respectfully submitted,

W. SUMNER HOLBROOK, JR.,
EDMUND NELSON,
Counsel for Petitioner.

Certificate of Counsel.

We hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 33 of rules of this Court.

W. SUMNER HOLBROOK, JR.,
EDMUND NELSON,
Counsel for Petitioner.